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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:	}	CFLI License No.: 603-G363
		CFLI Application No.: 60DBO-45389
JOHN BUWALDA, dba BUWALDA MORTGAGE, and BUWALDA MORTGAGE SERVICES, INC.		CONSENT ORDER
Respondents.	}	

This Consent Order (“Consent Order”) is entered into between the Commissioner of Business Oversight (“Commissioner”) and JOHN BUWALDA, dba BUWALDA MORTGAGE (“Buwalda”), and BUWALDA MORTGAGE SERVICES, INC. (“BMSI”), and is made with respect to the following facts:

RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending pursuant to the California Finance Lenders Law (“CFLI”) (Fin. Code, § 22000 et seq.).

B. Buwalda is a sole proprietorship operated by John Buwalda. Buwalda holds CFLI lender and broker license number 603-G363.

C. John Buwalda is also a co-owner of BMSI. BMSI applied for a CFLL license on or about June 24, 2015 (CFLL application no. 60DBO-45389). The application is currently pending and has not been approved. Consequently, BMSI is not licensed as a CFLL lender or broker.

D. BMSI provided to the Commissioner a report of loans brokered from October 11, 2013 through June 24, 2015 ("Report"). The Report showed that BMSI had brokered a total of 47 loans while unlicensed.

E. The Report also showed that on at least 42 of the loans brokered by BMSI, BMSI used Buwalda's CFLL license number.

F. Six of the forty-two loans brokered by BMSI were brokered to Endeavor America Loan Services dba The Money Source, Inc. ("Endeavor"). Endeavor did not hold a CFLL license when these six loans were brokered by BMSI.

G. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

H. The Commissioner finds that this action is appropriate, in the public interest, and consistent with the purposes fairly intended by the policy and provisions of the CFLL.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree as follows:

TERMS AND CONDITIONS

1. Purpose

The purpose of this Consent Order is to resolve Buwalda and BMSI's violations of the CFLL in a manner that avoids the expense of court proceedings and a hearing, is in the public interest, protects consumers, and is consistent with the purposes, policies, and provisions of the CFLL.

2. Finality of Order

Buwalda and BMSI agree to comply with this Consent Order and, further, stipulate that this Consent Order is hereby deemed a final and enforceable order issued pursuant to the Commissioner's authority under Financial Code section 22705.5.

3. Waiver of Hearing Rights

Buwalda and BMSI acknowledge that the Commissioner is ready, willing, and able to proceed

1 with an administrative hearing based on the facts contained in this Consent Order, and Buwalda and
2 BMSI hereby waive the right to a hearing, and to any reconsideration, appeal, or other right to review
3 which may be afforded pursuant to the CFLL. Buwalda and BMSI further expressly waive any
4 requirement for the filing of an Accusation that may be afforded by Government Code section
5 11415.60, subdivision (b), the California Administrative Procedure Act, the California Code of Civil
6 Procedure, or any other provision of law; and by waiving such rights, Buwalda and BMSI effectively
7 consent to this Consent Order becoming final.

8 4. Order to Desist and Refrain from CFLL Violations

9 The Commissioner hereby orders that Buwalda and BMSI desist and refrain from further
10 violations of CFLL section 22151, subdivision (b), by Buwalda assigning its CFLL license to BMSI
11 or any other broker or lender. Buwalda and BMSI are also hereby ordered to desist and refrain from
12 violating California Code of Regulations, title 10, section 1422, by engaging in brokering activity
13 with a lender not licensed under the CFLL. This order is effective as of the date this Consent Order is
14 executed by all parties. Buwalda and BMSI hereby waive any notice and hearing rights to contest this
15 Order that may be afforded under the California Financial Code, the California Administrative
16 Procedure Act, the California Code of Civil Procedure, or any other legal provisions.

17 5. Penalties

18 Buwalda and BMSI hereby agree to pay \$5,000.00 pursuant to CFLL section 22707.5, for
19 their violations of CFLL section 22151, subdivision (b) and California Code of Regulations, title 10,
20 section 1422 ("Penalties"). The Penalties shall be received within 30 days of the date this Order is
21 effective. The Penalties shall be made payable to the Department of Business Oversight and shall be
22 sent, via traceable method, to Joanne Ross, Senior Counsel, Department of Business Oversight, 1515
23 K Street, Suite 200, Sacramento, California 95814.

24 6. Full and Final Settlement

25 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a
26 full, final, and complete resolution of the violations identified in this Consent Order, and that no
27 further proceedings or actions will be brought by the Commissioner in connection with these matters
28 either under the CFLL, or any other provision of law, excepting therefrom any proceeding to enforce

1 compliance with the terms of this Consent Order, or action if such proceeding or action is based upon
2 discovery of violations of the CFLL which do not form the basis for this Consent Order or which
3 were knowingly concealed from the Commissioner by Buwalda and BMSI.

4 7. Binding

5 This Consent Order is binding on all heirs, assigns, and/or successors in interest.

6 8. Commissioner's Duties

7 The parties further acknowledge and agree that nothing contained in this Consent Order shall
8 operate to limit the Commissioner's ability to assist any other agency (city, county, state or federal)
9 with any prosecution, administrative, civil or criminal, brought by any such agency against Buwalda,
10 BMSI, or any other person based upon any of the activities alleged in these matters or otherwise.

11 9. Third Party Actions

12 It is the intent and understanding between the parties that this Consent Order does not create
13 any private rights or remedies against Buwalda or BMSI, create any liability for Buwalda or BMSI,
14 or limit defenses of Buwalda or BMSI for any person or entity not a party to this Consent Order.

15 10. Future Actions by Commissioner

16 The Commissioner may pursue any and all remedies available under law against Buwalda or
17 BMSI if the Commissioner later discovers that Buwalda or BMSI knowingly or willfully withheld
18 information used for and relied upon in this Consent Order. Further, Buwalda and BMSI agree that
19 this Consent Order does not resolve any penalties that may be assessed by the Commissioner upon
20 discovery of future or concealed violations of the CFLL.

21 11. Independent Legal Advice

22 Each of the parties represents, warrants, and agrees that it has received independent advice
23 from its attorney(s) and/or representatives with respect to the advisability of executing this Consent
24 Order.

25 12. Counterparts

26 The parties agree that this Consent Order may be executed in one or more separate
27 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
28 together constitute and be one and the same instrument.

13. Waiver, Modification, and Qualified Integration

The waiver of any provision of this Consent Order shall not operate to waive any other provision set forth herein. No waiver, amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

14. Headings and Governing Law

The headings to the paragraphs of this Consent Order are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Consent Order shall be construed and enforced in accordance with and governed by California law.

15. Full Integration

Each of the parties represents, warrants, and agrees that in executing this Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent Order it has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

16. Presumption from Drafting

In that the parties have had the opportunity to draft, review and edit the language of this Consent Order, no presumption for or against any party arising out of drafting all or any part of this Consent Order will be applied in any action relating to, connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

17. Voluntary Agreement

Buwalda and BMSI enter into this Consent Order voluntarily and without coercion and

acknowledge that no promises, threats or assurances have been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

18. Effective Date

This Consent Order shall not become effective until signed by all parties and delivered by the Commissioner's counsel by email to John Buwalda at johnbmsinc@gmail.com.

19. Public Record

Buwalda and BMSI acknowledge that this Consent Order is a public record.

20. Authority to Execute

Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order.

Dated: 1/5/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 1/3/17

JOHN BUWALDA,
dba BUWALDA MORTGAGE

By _____

Dated: 1/3/17

BUWLADA MORTGAGE SERVICES, INC.

By _____
JOHN BUWALDA